

and Warrant of Arrest to be set aside, the judgment in default of appearance to be set aside and the order made on July 8, 1983 be rescinded. The High Court upon hearing of the Motion on August 17, 1983, ordered as follows:

- (a) that the appellants' application to set aside the Writ of Summons and the Warrant of Arrest be dismissed with costs;
- (b) the judgment in default of appearance be set aside and the costs of obtaining such judgment be paid by the appellants to the respondents;
- (c) the order of the Court dated July 8, 1983 for sale of the vessel be varied in that notwithstanding the tenders for the sale of the vessel closing on August 19, 1983, the Sheriff permit the appellants to procure a buyer for a sum higher than that of the highest bidder provided that the appellants pay to the Sheriff a sum of \$15,000 on or before August 26, 1983 and the appellants procure the buyer to enter into a sale contract with the Sheriff on terms acceptable to the Sheriff on or before September 17, 1983; and
- (d) the appellants pay the costs of the Motion to the respondents.

Against that order this appeal was brought and at the conclusion of the hearing of the appeal, we allowed the appeal with costs here and below; set aside the order of the High Court made on July 8, 1983 and made an order in terms of Motion and other consequential orders.

It is not in dispute that at the time when the repairs were carried out to the vessel by the respondents and at the time when the Writ was issued, the appellants were the owners of the vessel with respect to all the shares therein. However, the appellants contended and, in our view, rightly, that they were not liable *in personam* to the respondents in respect of such repairs: there was no contract made between the appellants and the respondents for the repair of the vessel and consequently, there was no liability on the part of the appellants for any part of the amount claimed by the respondents. The case *The St. Merriel*⁽¹⁾ cited by counsel for the appellants is clearly in point. In that case the vessel, "St. Merriel", was at the material time chartered by demise to the charterer, and while under the charter repairs were carried out by the plaintiffs in respect of which an amount was owing to them. The plaintiffs took out a writ *in rem* claiming for the amount due in respect of materials and services provided to the "St. Merriel"

A and arrested the vessel. The defendants applied for the writ to be set aside on the ground, *inter alia*, that at all material times the vessel was chartered by demise and the defendants were not the party who would be liable on the claim in an action *in personam*. Hewson J. held, *inter alia*, that there was no contract express or implied between the plaintiffs and the defendants and the latter were not the party liable on the claim. He said:

B "I have had sufficient facts on affidavit in this case to reach a firm decision upon that matter and I ask myself on those facts, first, who would be liable in this case if the action as constituted succeeded? It would be the person who, when the cause of action arose — be he owner or the charterer or the person who is in possession or in control of the ship — made the contract for the repair by the plaintiffs. On the evidence, I am satisfied that there was no contract express or implied between the owners and the repairers. I am satisfied that there was no liability on the owners when the cause of action arose."

D In this case, on the materials before us, the contract for the repair of the vessel was made between the respondents and Denimar and the appellants were not a party thereto, and would not be liable to the respondents on the claim in an action *in personam*. Accordingly, the admiralty jurisdiction cannot be invoked by the respondents against the appellants under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

Order accordingly.

F Solicitors: Allen & Gledhill; C. Arul & Partners.

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[O.Cr.J. (Thean J.) August 22, 1985]

H [Singapore — Criminal Motion No. 26 of 1985]

I *Criminal Law & Procedure — Application for transfer of two cases pending in Subordinate Court to High Court — Whether false statement a statutory declaration — Criminal Procedure Code (Cap. 113), s. 184 — Penal Code (Cap. 103), ss. 193 & 199 — Statutory Declarations Act (Cap. 13), s. 2 — Statutory Declarations Act 1835 (U.K.)*

This was an application for an order that the two cases, DAC 4151 and 4152 of 1983, presently pending in the Subordinate Court, be transferred to the High Court pursuant to section 184 of the Criminal Procedure Code. In the two cases the applicants were respectively charged for having committed the offence of making a false statement in a

declaration which was by law receivable as evidence under section 199 read with section 193 of the Penal Code (Cap. 103). The applicants were first tried on the said charges before the learned Senior District Judge who acquitted and discharged them on the ground that it was not a statutory declaration. The Public Prosecutor appealed and the learned Chief Justice held that although it was not a statutory declaration under the Statutory Declarations Act, 1835 (United Kingdom), it was nevertheless a declaration within the meaning of section 199 of the Penal Code. He allowed the appeal and ordered a fresh joint trial of the applicants before another District Judge.

The applicants advanced three grounds for this application: (1) that it was not open to them to plead before the Subordinate Court that the declaration was not a declaration within the meaning of section 199 of the Penal Code as the Court would be bound by the ruling made by the Chief Justice and they would therefore be deprived of a fair trial; (2) the two cases involved some questions of law of unusual difficulty; and (3) that they were Chairman and Secretary General respectively of a political party in opposition to the party in power and it was expedient for the ends of justice that they should be tried in the High Court.

Held, dismissing the application: (1) the applicants cannot raise the same issue again in the Subordinate Court. It had been fully argued and had been decided upon, and such a decision is binding on the applicants;

(2) in seeking to transfer the two cases to the High Court with a view to raising the same issue again, which had been decided upon after full argument, is tantamount to an abuse of court process;

(3) the Court is unable to discern any question of law of unusual difficulty which is likely to arise in these cases;

(4) the fact that they hold such positions in a political party is irrelevant.

CRIMINAL MOTION.

J.B. Jeyaretnam for the applicants.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thean J. : This is an application for an order that the two cases, DAC 4151 and 4152 of 1983, presently pending in the Subordinate Court be transferred to the High Court pursuant to section 184 of the Criminal Procedure Code. In the two cases the applicants are respectively charged for having committed an offence under section 199 read with section 193 of the Penal Code (Cap. 103). In each case the charge is as follows:

"You, ... are charged that you on or about August 3, 1982 at Singapore made a false statement in a declaration which was by law receivable as evidence before Daljit Singh a Commissioner for Oaths when they stated that

- A "(a) Receipts and Payment Account for the period January 1, 1982 to June 16, 1982,
- (b) Income and Expenditure Account for the period January 1, 1982 to June 16, 1982,
- (c) Balance Sheet as at June 16, 1982

B drawn up by A. Balakrishnan, the Treasurer of the Workers' Party and affirmed by him in an affidavit dated July 6, 1982, exhibited a true and fair view of the transactions and results for the period specified therein and of the state of affairs of the Workers' Party as at the date specified;"

C which you did not believe to be true touching a point material to the object for which the declaration was made namely the verification of the Accounts of the Workers' Party and had thereby committed an offence punishable under section 199 read with section 193 of the Penal Code (Chapter 103). (Particulars.)"

The applicants were first tried on the said charges before the learned Senior District Judge and at the conclusion of the prosecution's case were acquitted and discharged. The learned District Judge ruled that the declaration jointly made by them on August 3, 1982 was not a declaration which a court of justice was bound or authorised by law to receive as evidence of any fact because it did not contain the following statutory wording: "and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835", which is found in the Schedule to the Statutory Declarations Act (Cap. 13). Against that decision the Public Prosecutor appealed, and the appeal was heard before the learned Chief Justice. He held that the declaration was not made in the form prescribed in the Schedule to the Statutory Declarations Act and therefore was not a statutory declaration under the Statutory Declarations Act, 1835 of United Kingdom (which is deemed by section 2 of the Singapore Statutory Declarations Act to be in force in Singapore), but nevertheless was a declaration within the meaning of section 199 of the Penal Code, and his ground for so holding is this. On June 1, 1982, the High Court, upon an application by way of execution proceedings made by one Tay Boon Too to recover his costs awarded to him some years ago, by an order appointed the Official Receiver as the Receiver to receive the assets of the Workers' Party. Under Order 30 of the Rules of the Supreme Court, a Receiver so appointed by Court is required to submit accounts to the Court and each account submitted must be accompanied by an affidavit verifying it, and under Order 41 rule 5(2) an affidavit sworn for the purpose of interlocutory proceedings may contain statements of information or belief with sources and grounds thereof.

Accordingly, in compliance with Order 30, the Receiver submitted his accounts to the Court for the purpose of passing them verified by his affidavit to which was annexed the declaration jointly made by the applicants as permitted under Order 41 rule 5(2). As the declaration formed part of the Receiver's affidavit, it was a declaration which the Court was authorised by the Rules of the Supreme Court to receive as evidence in the receivership proceedings and was therefore a declaration within the meaning of section 199 of the Penal Code. The learned Chief Judge allowed the appeal by the Public Prosecutor and ordered a fresh joint trial of the applicants before another District Judge.

The first ground advanced on behalf of the applicants in support of the application is that it is not open to them to plead before the Subordinate Court that the declaration was not a declaration within the meaning of section 199 of the Penal Code inasmuch as the Subordinate Court would be bound by this ruling made by the learned Chief Justice. The High Court, however, would not be so bound and would be in position to entertain a challenge to this ruling. In view of this, the applicants, so they contended, would not have a fair trial before the Subordinate Court.

In my opinion this ground clearly cannot be sustained. First, plainly the applicants cannot raise the same issue again in the Subordinate Court. It had been raised and argued before the Subordinate Court which gave its decision thereon. It then went on appeal to the High Court and was further argued before the learned Chief Justice; he held that the Subordinate Court erred in law and he ruled that the declaration was a declaration within the meaning of section 199 of the Penal Code. The issue, insofar as the two cases, DAC 4151 and 4152 of 1983, are concerned, had been fully argued and had been decided upon, and such a decision is binding on the applicants; surely the applicants cannot re-open this issue. To say that because of this ruling the applicants would not have a fair trial in the Subordinate Court is an argument totally untenable and is a misconceived argument. Secondly, in seeking to transfer the two cases to the High Court with a view to raising the same issue again, which had been decided upon after full argument, is, in my view, tantamount to an abuse of court process.

Next, it was argued on behalf of the applicants that the two cases would involve some questions of law of unusual difficulties and on that ground they should be transferred to the High Court. This

A ground has not been made out to my satisfaction. I am unable to discern any question of law of unusual difficulty which is likely to arise in these cases. Initially, the question, namely, whether the document signed by them jointly was a declaration within the meaning of section 199 of the Penal Code might have posed some difficulty, but that
B has now been resolved by the decision of the learned Chief Justice.

Lastly, the applicants relied on the fact that they are Chairman and Secretary General respectively of a political party in opposition to the party in power and it is expedient for the ends of justice that they should be tried in the High Court. The fact that they hold such positions in a political party is irrelevant, and again it has not been made out to my satisfaction that an order for transfer
C ought to be made on that ground.
D

Application dismissed.

Solicitors: J. B. Jeyaretnam & Co.

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F

KULWANT v. PUBLIC PROSECUTOR

[O.Cr. J (Punch Coomaraswamy J.) April 17, 1986]

[Singapore — Criminal Motion No. 12 of 1985]

G

Criminal Law and Procedure — Statement by accused to Police before being charged — Proceedings about to commence in lower court — Application for certified copy of accused's statement to Police — Forum and time for application — Jurisdiction of the High Court — Supreme Court of Judicature Act (Cap. 15), ss. 7(a), 15, 18, 23 & 27 — Criminal Procedure Code (Cap. 113), ss. 5 & 57(1).

H

Evidence — Right to a certified copy without right to inspect — Evidence Act (Cap. 5), ss. 76, 78 & 79.

I

The applicant was awaiting committal proceedings before a Magistrate for the offence of rape. He made two statements to the Police. One was under section 121(6) of the Criminal Procedure Code. The other was made earlier. He applied to the High Court to be furnished with certified copies of a number of documents arising out of the investigations. He was furnished with a certified copy of the first information report. His application for other documents was abandoned and he proceeded only with his application for a certified copy of the earlier statement to the Police.